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10/599,165

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Markus Binding

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GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC  
55 SOUTH COMMERCIAL STREET  
MANCHESTER, NH 03101

EXAMINER

DOE, SHANTA G

ART UNIT

PAPER NUMBER

1797

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/599,165 | <b>Applicant(s)</b><br>BINDING ET AL. |  |
|                              | <b>Examiner</b><br>SHANTA G. DOE     | <b>Art Unit</b><br>1797               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 37-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 37-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Regarding claim 37 and claims 38-48 that depend on claim 37, the claims are indefinite and incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are:

(I) the structural relationship between the electrical equipment and the rest of the waste treatment system, for example, how is it structurally related to the push wall, the aeration system, the control unit and /or the deployment apparatus.

(II) The structural relationship between the aeration system and the other devices in the waste system, for example, how is it structurally related to the push wall, and/or the control unit.

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(III) The structural relationship between the deployment apparatus and the other devices in the waste treatment system, for example, how is it structurally related to the push wall, and/or the control unit.

(IV) The structural relationship between the control unit and the other devices in the waste treatment system, for example, how is it structurally related to the push wall, deployment apparatus and/or the aeration system.

(V) Basically, how all the elements of the waste treatment system are structurally connected.

4. Additionally, regarding claim 48, the phrase "in particular tarpaulin" renders the claim indefinite because it is unclear whether the claim invention is only limited to a tarpaulin or if other devices with substantially impermeable surface are part of the claimed invention.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 37, 38, 40-42, 44, 45 and 47 rejected under 35 U.S.C. 103(a) as being unpatentable over Schnorr (DE19724462) in view of Bryan-Brown (US 5,312,754).

Regarding claim 37, Schnorr discloses an aerobic waste treatment system (15) comprising a push wall (see fig. 1 the wall against which the waste(4) is heaped) against which waste can be heaped, an aeration system (a container 7 with an aerator which exhibits a ventilation) for providing ventilated air to the waste, electrical equipment (blower, the humidifier, and the reference mentions led in the circuit ), and a

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deployment apparatus (14) for covering the waste with a removable flexible enclosure (foil cover), characterized in that the push wall is part of at least one transportable container (7) (see fig 1, see entire document especially the paragraphs describing fig 1 which are on page 2 -3 of the English translated version from the EPO site). The Schnorr reference fails to disclose that the waste treatment device specifically comprises a control unit.

Bryan-Brown (US 5,312,754) discloses a transportable modular waste treatment system comprising a push wall (16), a cover (18), and an aeration system, a control unit (movable container with a temperature controlled aeration system and an electronic controller) and electrical equipment (blower) (see Bryan-Brown abs, col. 3 lines 41 -68; col. 4 lines 1-4 and col. 7 lines 16-25).

In view of Bryan-Brown, it would have been obvious to one having ordinary skill in the art at the time of the invention to have the system of Schnorr further comprise a control unit since controllers (control unit) are well known in the art and are used to set process parameter for automatically controlling the process.

Regarding claim 38, the combination as applied to 37 above discloses an aerobic waste treatment system according to claim 37, in which the system is modular (see Bryan-Brown col. 3 lines 62-63 and Schnorr page 3).

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Regarding claim 40, the combination as applied to claim 37 above discloses the aerobic waste treatment system according to claim 37, in which the container comprises the aeration system, the electrical equipment, the control unit, the deployment apparatus and/or the removable flexible enclosure (see fig 1 and entire document).

Regarding claim 41, the combination as applied to claim 40 above discloses the aerobic waste treatment system according to claim 40, in which the container is adapted to house and transport the aeration system, the electrical equipment, the control unit, the deployment apparatus and/or the removable flexible enclosure (see fig 1 and entire document, the Schnorr reference did state that the whole apparatus 15 including the container 7 is mobile).

Regarding claim 42, the combination as applied to claim 41 above discloses the aerobic waste treatment system according to claim 41, in which the container comprises specially adapted mountings for the housing and/or transport of the aeration system, the electrical equipment, the control unit, the deployment apparatus and/or the removable flexible enclosure, respectively.

Regarding claim 44, the combination as applied to claim 37 above discloses the aerobic waste treatment system according to claim 37, in which the container comprises an independent electrical power source (see fig 1 and entire Schnorr document, the

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reference talks about a led in the circuit and it is inherent that devices such as the blower, the humidifier and cooler would use electric power) .

Regarding claim 45, the combination as applied to claim 37 above discloses the aerobic waste treatment system according to claim 37, in which the container houses a service area (the interior of the container (7) in Schnorr is capable of being a service area).

Regarding claim 47, the combination as applied to claim 37 above discloses the aerobic waste treatment system according to claim 37, in which the removable flexible enclosure is a liquid tight and/or gas-permeable cover (Schnorr discloses that the cover is a foil which protects the waste from getting wet when it rains see Schnorr English translation from EPO page 2).

9. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schnorr (DE19724462) in view of Bryan-Brown (US 5,312,754) as applied to claim 37 above and further in view of Moliard (US 4,184,602) .

Regarding claim 39, the combination as apply to claim 37 above discloses the aerobic waste treatment system according to claim 37, in which the push wall (see fig. 1 the wall against which the waste (2) is heaped) comprises at least part of a reinforced wall of the



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container (see entire Schnorr document). The combination fails to specifically disclose that the said wall is mountable on said container.

Moliard (US 4,184,602) discloses that it is known in the art for containers used in composting system to have mountable wall (called insert panel) (see Moliard abs; fig.1-6; and entire document)

However, it would have been obvious to one having ordinary skill in the art at the time of the invention to have the wall in the system of the combined reference be mountable on the container as is taught by Moliard, since the wall being mountable onto the container does not functionally distinguish the wall from what is taught in the prior art (the wall being mountable does not change the function of the wall, whether or not the wall is mountable, the wall is used a push against which the waste is heaped).

10. Claims 43 & 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schnorr (DE19724462) in view of Bryan-Brown (US 5,312,754) as applied to claim 37 above, and further in view of Allen (US 6,534,306).

Regarding claim 43, the combination as applied to claim 37 above discloses the Aerobic waste treatment system according to claim 37. However, the combination fails to disclose that the container comprises at least one connector for a ventilation manifold.

Allen discloses a waste treatment system comprising a manifold (27, 29) connected to the container for ventilation (see Allen abs, figs.; col. 1 line 14, and col. 3 lines 10 -25, col. 4 lines 17 – 27).

In view of Allen, it would have been obvious to one having ordinary skill in the art at the time of the invention to have the device of the combined reference comprise at least one connector for a ventilation manifold as is taught by Allen since it is a functionally equivalent means known in the art for attaching a ventilating means to aid in ventilating the waste in a waste treatment system.

Regarding claim 46, the combination above discloses the aerobic waste treatment system according to claim 37. The combination fails to specifically disclose that the container is an ISO container.

Allen discloses that it is known in the art for ISO container to be part of waste treatment system (see Allen abs, col. 1 line 14, and col. 3 lines 10 -25).

In view of Allen, it would have been obvious to one having ordinary skill in the art at the time of the invention to replace the container of the Schnorr with the ISO container as taught by Allen because the substitution of one known container for another would have yielded a predictable results of being able to contain devices and elements.

11. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schnorr (DE19724462) in view of Bryan-Brown (US 5,312,754) as applied to claim 37 above, and further in view of Jones, Jr. et al (US 20020195781).

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Regarding claim 48, the combination as applied to claim 37 above discloses the aerobic waste treatment system according to claim 37. However, the combination fails to disclose that the system further comprises a substantially impermeable surface, in particular tarpaulin, on which the waste can be heaped.

Jones, Jr. et al(US 20020195781) disclose that it is known in the art to pile or heap waste unto a tarpaulin surface lying on the ground (see Jones, Jr., abs; fig 2&3).

In view of Jones, Jr., it would have been obvious to one having ordinary skill in the art at the time of the invention to have the system of the combined reference further comprise a tarpaulin on which the waste can be heaped as is taught by Jones because such a modification would enable the waste on the tarpaulin to be easily moved from one location to another (see Jones abs.).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANTA G. DOE whose telephone number is (571)270-3152. The examiner can normally be reached on Mon-Fri 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GSD

/Walter D. Griffin/  
Supervisory Patent Examiner, Art Unit 1797